IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

C.R. No. No. 90 of 1999.

Judgement reserved on:

Date of decision : May 19, 2006.

Surinder Mohan ……..Petitioner.

Versus

Amar Singh ……. Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the petitioner: Mr. R.L.Sood, Sr. Advocate with Mr. Vikas Rajput, Advocate.

For the respondent: Mr. H.K.Bhardwaj, Advocate.

Surjit Singh J. (Oral).

This revision by the tenant is directed against the orders of the Rent Controller, dated 20.5.1994, and Appellate Authority, under the H.P. Urban Rent Control Act, dated 13.11.1998, whereby his eviction on the ground of non-payment of rent has been ordered. The main grievance of the revision petitioner is that as a matter of fact, not he alone, but he and his father Tarlok Chand, are joint tenants in the premises and that his father Tarlok Chand having not been joined as a co-tenant (co-respondent) with him

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Whether reporters of local Papers may be allowed to see the judgment?

in the eviction petition, the petition was bad, but the Rent Controller as also the Appellate Authority, have rejected his plea holding that the issue has become res judicata, in view of the finding returned by the Rent Controller, which was affirmed by the Appellate Authority and the Hon'ble High Court, in an earlier litigation, wherein, it was held that there was relationship of landlord and tenant between the revision petitioner and respondent Amar Singh.

Respondent Amar Singh, landlord had filed a petition in the year 1988, under Section 4 of the H.P. Urban Rent Control Act, seeking fixation of fair rent alleging that the premises were let out to the present revision petitioner at the rate of Rs. 450/- per annum plus taxes in the year 1973, but the rent was on the lower side. Revision petitioner besides contesting the petition on merits, took the plea that the petition was bad for non-joinder of his father as party, because he was a co-tenant with him. A specific issue was framed "whether the petition was bad for non-joinder of necessary parties" and it was numbered as issue No.3. The trial court returned the finding that the agreed rent was the just rent and no revision on the higher side was called for. After recording this finding, the Rent Controller observed that other issues including issue No. 3, pertaining to the plea of the tenant- revision petitioner that the petition was bad for non-joinder of necessary parties, i.e. his father, a co-tenant with him, had become redundant. No specific finding was recorded whether the revision petitioner alone was a tenant or he and his father were joint tenants. That order was challenged by the landlord by filing an appeal, because the agreed rent had been held to be the just rent. That appeal was

also dismissed without looking into the plea of the revision petitioner- tenant that the petition was bad for non-joinder of his father, who he alleged was a co-tenant with him. Revision petition was filed by the landlord in this court. That too was dismissed, but this court also did not touch the question whether the father of the revision petitioner was a co-tenant with him and whether the petition was bad for his non-joinder.

After that the petition under Section 14 of H.P. Urban Rent Control Act, was filed by the respondent against the present revision petitioner, seeking his ejectment from the premises on the ground that he had failed to pay rent for certain specific period. The tenant again raised the question that the petition was bad for non-joinder of his father, who he alleged was a co-tenant with him. It may be noticed that in the earlier petition for fixation of fair rent as also the present petition, while the landlord took the specific stand that the tenancy was created in the year 1973, the revision petitioner- tenant claimed that the tenancy was created in the year 1971 by the mother of the respondent, who was then the landlady and that that tenancy was created in favour of himself and his father. The Rent Controller, while dealing with the issue pertaining to the plea of the tenant that the tenancy had been created in favour of himself and his father and that the petition was bad for non-joinder of his father, has held that the matter stands finally determined in the previous litigation, i.e. the case pertaining to the fixation of the fair rent, because in that petition it was held that there was relationship of landlord and tenant between the parties. The tenant was held to be in arrears of rent and consequently, the order

of ejectment was passed. Tenant went in appeal to the Appellate Authority, which has also rejected his plea that his father is a joint tenant with him and because of his non-joinder, the petition is bad. The Appellate Authority has also relied upon the judgement delivered in the earlier case by the Rent Controller, which was affirmed by the Appellate Authority and the High Court.

Now the grievance of the revision petitioner is that as a matter of fact, in the previous litigation the question whether the tenancy was created jointly in favour of himself and his father, had not been determined at all, and, therefore, there was no question of res judicata and that the evidence led in the petition, out of which this revision has arisen, sufficiently proves his plea.

I have heard the learned counsel representing the revision petitioner as also the learned counsel for the respondent. I have been taken through the judgement of the Rent Controller delivered in the earlier case, particularly the following portion of para-6, at page 4 of the judgement of the Rent Controller by the learned counsel for the respondent in support of his contention that the previous judgement operates as res judicata.

> "…… Whereas the respondent refuted these allegations of petitioner. His case is that the rent determined with him by the landlord at the time of creation of tenancy was on higher side as compare to the rent paid by the occupants of the similar buildings during that period."

The aforesaid portion is the observation of the Rent Controller. No doubt, this observation gives a mild impression that the tenant admitted that the tenancy was between him as the sole

tenant and the landlord, but the summary of the facts, as recorded in this very order of the Rent Controller, belies this observation. While summarizing the stand of the tenant, the Rent Controller has very specifically noticed in para-2 of its aforesaid order that there existed no relationship of landlord and tenant between the parties and that the tenancy was created in the year 1971, both in his and his father's favour. Now when this was the categorical stand of the tenant, the observation made in para-6, as reproduced hereinabove, carries no weightage. In any case, when a specific issue was framed with regard to the aforesaid plea of the tenant, i.e. issue No.3, which read "whether the petition is bad for want of necessary parties, as alleged in para No.2 of the preliminary objection? OPR" and no finding was recorded on the said issue and the same was held to have become redundant, in view of the finding that the agreed rent was the fair rent, the aforesaid observation which is otherwise also contrary to the stand of the revision petitioner in the earlier case also, becomes totally meaningless and insignificant.

The above stated position makes it absolutely clear that in the earlier litigation, pertaining to fixation of rent, no finding was returned that the tenancy was created solely in favour of the present revision petitioner and therefore, the Rent Controller and the Appellate Authority, were not right in holding that this controversy already stood determined in the previous litigation and the plea raised by the revision petitioner was res judicata.

Apart from the order of the Rent Controller, Ex. PW 1/B, delivered in the earlier matter, there was no evidence, worth the

name, suggesting that the tenancy was created solely in favour of the present revision petitioner. Respondent Amar Singh, while in the witness box as PW 1, did not deny a specific suggestion put to him in the cross-examination that the house, in question, was given on tenancy to the revision petitioner and his father in the year 1971 by his mother. He simply expressed ignorance. His not denying the said suggestion categorically corroborates the testimony of the revision petitioner, who appeared as RW 1 and testified in no uncertain terms that the tenancy was created by the mother of the present respondent jointly in his and his father's favour on 1.9.1971 and a receipt, copy Ex. RW 1/A, was issued. Also his statement that the tenancy was created in the year 1971 by the mother of the respondent jointly in his and his father's favour was not subjected to cross-examination. A reading of the receipt Ex. RW 1/A, shows that the advance rent at the time of creation of the tenancy was paid jointly by the revision petitioner and his father Tarlok Chand and they are referred to as one party (tenant) while landlady as the other party.

In view of the above stated position, revision petition is allowed. The orders of the Rent Controller and the Appellate Authority, which have been challenged through this petition, are set-aside.

May 19, 2006. **(Surjit Singh),**
(Hem) **Judge.**